

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

**In re L.J., a Person Coming Under the
Juvenile Court Law.**

THE PEOPLE,

A135138

Plaintiff and Respondent,

**(Alameda County
Super.Ct.No. SJ11016779)**

v.

L.J.,

Defendant and Appellant.

_____ /

The juvenile court found L.J. (the minor) committed felony grand theft from a person (Pen. Code, § 487, subd. (c))¹ and sold marijuana (Health & Saf. Code, § 11360, subd. (a)). The court declared the minor a continued ward of the court and removed him from his mother's care.

On appeal, the minor contends insufficient evidence supports the court's finding that he sold marijuana. We disagree and affirm.

¹ Unless otherwise noted, all further statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

The court declared the minor a ward of the court in July 2011. The minor admitted committing second degree burglary (§ 459), felony grand theft from a person (§ 487, subd. (c)), and violating probation (Welf. & Inst. Code, § 777).

In a February 2012 subsequent juvenile wardship petition, the People alleged the minor committed robbery (§ 211) and sold marijuana (Health & Saf. Code, § 11360, subd. (a)). In February 2012, 17-year-old R.S. was attending Mount Eden High School with the minor. On February 15, 2012, R.S. purchased marijuana from the minor. R.S. asked the minor if he “could get \$5 worth of marijuana[,]” or about half a gram. R.S. did not have any money, so he promised to “pay [the minor] back later.” R.S. knew what he purchased from the minor was marijuana because he smokes marijuana and “know[s] what it looks like.”² In addition, the substance was in a bag. R.S. smoked the marijuana.

About a week later, the minor confronted R.S. and asked him for the money R.S. owed. When R.S. explained he did not have the money, the minor “got mad” and said, “You’re disrespecting me.” Then he told R.S. to “[e]mpty [his] pockets.” The minor ran his hands over R.S.’s pants pockets, examined R.S.’s empty wallet, and took R.S.’s iPhone. The minor walked away with his hands under his clothes in a manner suggesting he might “have a weapon underneath his shirt.” At that point, R.S. borrowed money from a friend and offered it to the minor. The minor refused the money and walked away with R.S.’s iPhone. R.S. reported the incident to the police and to the school principal.

After the prosecution completed its case in chief, the minor moved for acquittal, claiming the prosecution had failed to establish the substance he sold was marijuana. (Welf. & Inst. Code, § 701.1.) The court denied the motion. It concluded, “I have enough evidence here to say that this was marijuana [I]t was the marijuana that’s used and sold on the streets. It was the marijuana that was smoked by the obvious users of marijuana. And he [R.S.] clearly knew what he was smoking, by his own testimony.”

² R.S. had “gotten in trouble” with school officials on at least one previous occasion for smoking marijuana.

Following the dispositional hearing, the court continued the minor as a ward of the court and ordered him removed from his mother's custody and placed in a suitable family or group home.

DISCUSSION

Health & Safety Code section 11360, subdivision (a) makes it a crime to, among other things, sell marijuana. (*People v. Van Alstyne* (1975) 46 Cal.App.3d 900, 906.) The minor's sole contention on appeal is R.S.'s testimony "was insufficient to establish that the substance he allegedly bought from the minor was marijuana." When reviewing the sufficiency of the evidence to support a conviction, "we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605, fn. omitted.)

As noted above, R.S. testified the substance he purchased from the minor was marijuana because he smokes marijuana and "know[s] what it looks like." In addition, R.S. explained he had been punished for smoking marijuana at school before the incident and was familiar with how marijuana is typically packaged for sale. Moreover, R.S. smoked the marijuana. Finally, when the minor demanded payment, R.S. acknowledged he owed the minor money: R.S. did not claim the substance he purchased was not marijuana. This evidence is sufficient to support the court's finding that the minor sold marijuana.

People v. Winston (1956) 46 Cal.2d 151, 155 is instructive. There — as here — the defendant claimed "there was no proof that the substance smoked was marijuana. While conceding that the prosecution need not physically produce the narcotic, he insists that to prove a substance is a narcotic, there must be not only the testimony of the user but also that of a medical doctor or expert. [Citations.]" (*Id.* at p. 155.) The California Supreme Court rejected this argument and determined two prosecution witnesses were competent to testify "that the cigarettes were marijuana[.]" (*Id.* at p. 156.) Both minor girls testified "that they had frequently smoked marijuana; they described the appearance

of a marijuana cigarette, having tucked in ends; they related the custom of smoking such a cigarette in chain fashion in a group . . . and they told of their ‘high’ feeling after about 15 minutes, . . . [and] their feeling of ‘coming down[.]’” (*Ibid.*) Here as in *Winston*, R.S. testified he had smoked marijuana and was familiar with how it was packaged for sale. In addition, he smoked the substance he purchased from the minor and did not testify the substance was not marijuana. R.S. was not required to testify about the “intoxicating effect” of the drug.

Relying on *Cook v. United States* (9th Cir. 1966) 362 F.2d 548, the minor contends R.S.’s “mere visual inspection” of the substance was insufficient to prove it was marijuana. In *Cook*, the Ninth Circuit Court of Appeals concluded the prosecution failed to prove that the “‘38 spoons’ of alleged cocaine and . . . other portions of white powder . . . were in fact narcotic drugs” in part because “[t]here was no qualified witness called to establish or testify that any of these powders were in fact narcotic drugs.” (*Id.* at p. 548, fn. omitted.) The *Cook* court stated, “[w]e note judicially that whether or not a powder or substance is a narcotic cannot be determined by a mere inspection of its outward appearance[.] In this case, for reasons unknown to us, the Government made no attempt to prove the narcotic character of the drugs and did not succeed in doing so.” (*Ibid.*) *Cook* is distinguishable. Here, and in contrast to *Cook*, the prosecution offered the testimony of a qualified witness — R.S. — to establish he bought marijuana from the minor. He observed the substance, smoked it, and testified it was marijuana. As in *Winston*, R.S.’s prior experience with marijuana was sufficient for the court to find the substance was marijuana.

We conclude sufficient evidence supports the court’s finding that the minor sold marijuana in violation of Health and Safety Code section 11360, subdivision (a).

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.